IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION LD.NO.2184 OF 2004

Mr.Deepak Rathore & Ors. ...Petitioner.
Vs.
University of Mumbai & Anr. ...Respondents.
....
Mr. V. M. Thorat for the Petitioners.
Mr. Susheel Mahadeshwar for Respondent No.1.
.....

CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

September 30, 2004.

P.C.:

The Petitioners have challenged, in these proceedings under Article 226 of the Constitution of India, Ordinance 3589 issued by the University of Mumbai. Ordinance 3589 provides as follows :

> "Ordinance O.3589:
>
> Failure to pass the First, the Second and the Third B. Pharm. Sciences examination will not disqualify the candidates from presenting himself on a subsequent occasion on a new application being forwarded and fresh fee paid. <u>However, for Fourth B. Pharm. Sciences, failure to pass the Fourth B. Pharm. Sciences examination after four attempts will disqualify the candidate from presenting himself as candidate on any</u>

subsequent occasion." (emphasis supplied).

2. According to the aforesaid Ordinance, a student has to complete the Fourth and final year of B. Pharmacy Course within a maximum of four attempts. We do not find any infirmity or arbitrariness in the Ordinance. The issue is not *res integra* and has been dealt with in a judgment of three Learned Judges of the Supreme Court in **University of Mysore vs. Gopala Gowda,** AIR 1965 S.C. 1932. Mr.Justice J.C. Shah (as the Learned Chief Justice then was) speaking for the Bench, observed thus:

> "The Academic Council is thereby invested with power to control the entire academic life of the student from the stage of admission to a course of study to the ultimate conferment of a degree or academic distinction. Admission to a course or branch of study depending upon possession of the minimum qualifications prescribed does not divest the Academic Council of its control over the academic career of the student, for the Council has for maintaining standards the power to prescribe schemes of examinations, and also to prescribe conditions on which students shall be admitted to the examinations. Power to prescribe conditions on which a student may be admitted to the examinations, in our opinion, necessarily implies the power to refuse to admit a student in certain contingencies, for the power to admit to an examination implies the power to weed out students who have on the application of a reasonable test proved themselves to be unfit to continue the course or prosecute training in that course. If on account of

> general inaptitude for being trained in a course or on account of supervening disability to prosecute a course of study, a student admitted to that course is found by the Academic Council to be unfit to prosecute his training it would, in our judgment, be within the power of the Academic Council, in exercise of its authority to control and maintain standards, and also of its authority to prescribe conditions on which students may be admitted to examination, to direct that the student shall discontinue training in that course. And failure by a student to qualify for promotion or degree in four examinations, is certainly a reasonable test of such inaptitude or supervening disability. If after securing admission to an institution imparting training for professional courses, a student may be held entitled to continue indefinitely to attend the institution without adequate application and to continue to offer himself for successive examinations, a lowering of academic standards would inevitably result." (emphasis supplied).

3. We find nothing arbitrary or unlawful in the Ordinance which has been adopted by the University. The Petition is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.